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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

MINNIE WATKINS,

Plaintiff and Appellant,

v.

CHINATOWN EXPRESS,

Defendant and Respondent.

B159692

(Los Angeles County
Super. Ct. No. YC040135)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
Ramona See, Judge. Affirmed.

Law Office of Henry John Matussek II and Henry John Matussek II for Plaintiff and Appellant.

Law Offices of Koester and Beavers and Sandra K. Brislin for Defendant and Respondent.

Plaintiff Minnie Watkins appeals from the judgment entered in this personal injury action following a jury verdict in favor of defendant ChinaTown Express. Watkins contends the jury's verdict is not supported by substantial evidence and the trial court

erred in admitting certain expert testimony from one of ChinaTown Express’s witnesses. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Watkins was allegedly injured when she spilled hot wonton soup on herself. She sued ChinaTown Express, the restaurant from which she had purchased the soup “to go,” claiming it had negligently packaged the dangerously hot soup.¹

After a three-day trial the jury returned a special verdict finding ChinaTown Express was not negligent. The trial court entered judgment on March 8, 2002.²

Watkins filed a timely notice of appeal and elected to proceed by way of appendix in lieu of clerk’s transcript. Watkins has designated the testimony of only three witnesses (ChinaTown Express’s owner Steven Tran and the expert witnesses who testified for Watkins and for ChinaTown Express, respectively) for inclusion in the reporter’s transcript.

DISCUSSION

Watkins’s contention there is no substantial evidence to support the jury’s verdict fails for three independent reasons.

First, Watkins has waived her “substantial evidence” challenge by failing to provide the entire record, including the jury instructions and a complete trial transcript. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 872 [review of entire record necessary to determine claim of prejudicial error].) In the absence of a complete evidentiary record, the sufficiency of the evidence is not open to question; and we must presume substantial evidence supported the jury’s findings. (*Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 453.)

¹ Watkins’s complaint is not part of the record on appeal.

² Watkins moved for a new trial based on the same alleged errors she urges on appeal. The record does not contain a ruling on the motion for new trial, but we assume it was denied by the trial court.

Second, Watkins erroneously contends the testimony of her expert, Leon Gottlieb, was binding on the jury and required a finding that ChinaTown Express was negligent in packaging the wonton soup for takeout. To the contrary, although a jury may not arbitrarily or unreasonably disregard the testimony of an expert, it is not bound by the expert's opinion. Instead, it must give to each opinion the weight it finds that opinion deserves. So long as it does not do so arbitrarily, a jury may entirely reject the testimony of a plaintiff's expert, even where the defendant does not call any opposing expert and the expert testimony is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890; *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 632-633; *Conservatorship of McKeown* (1994) 25 Cal.App.4th 502, 507-510; *Ortzman v. Van Der Waal* (1952) 114 Cal.App.2d 167, 170-172 [jury not bound to accept the opinions expressed by medical experts even where no opposing opinion is offered].) Our own review of Gottlieb's testimony reveals it was vague, confusing and sometimes contradictory. The jury's rejection of that testimony was neither arbitrary nor unreasonable. (See *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479 [appellate courts do not reweigh the evidence; that function is exclusively for the jury].)

Finally, the "substantial evidence" standard is inappropriate in this case because it improperly shifts the burden to ChinaTown Express to prove its lack of negligence. As the plaintiff Watkins had the burden of proving ChinaTown Express was negligent. The jury was not required to believe or accept her evidence (*Foster v. Civil Service Com.*, *supra*, 142 Cal.App.3d at p. 453) and was entitled to conclude she had failed to carry her burden of proof, regardless of any evidence ChinaTown Express may or may not have presented. A defense verdict will not be disturbed based on the claim the evidence was insufficient to *disprove* the defendant's negligence.³

³ In light of our resolution of Watkins's first claim of error, we need not address her further challenge to the trial court's rulings with respect to ChinaTown Express's expert witness testimony regarding causation. Because the jury found ChinaTown Express was not negligent, it never reached the issue of causation.

DISPOSTION

The judgment is affirmed. ChinaTown Express is to recover its costs.

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PERLUSS, P. J.

We concur:

WOODS, J.

MUNOZ (AURELIO), J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.